



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, D.C.

September 27, 2013

[REDACTED]

Re: OCR Case Number: 11-12-1457

Dear [REDACTED]:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on May 9, 2012, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the District of Columbia Public Schools (DCPS). You alleged that DCPS discriminates against female students on the basis of sex. Specifically, the complaint included an allegation that DCPS subjects high school girls to discrimination on the basis of sex because the selection of interscholastic sports at DCPS's high schools does not effectively accommodate the interests and abilities of members of both sexes to the extent necessary to provide equal athletic opportunity.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106. Title IX prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, DCPS is subject to Title IX; accordingly, OCR had jurisdiction to investigate this complaint.

Prior to the completion of our investigation, DCPS requested to resolve the complaint. Pursuant to Section 302 of OCR's Case Processing Manual, OCR discussed resolution options with the District. On September 26, 2013, DCPS signed the enclosed agreement to resolve the complaint. The provisions of the agreement are aligned with the issues raised in the complaint and with information obtained during OCR's investigation, and are consistent with the applicable regulations.

OCR will monitor DCPS's implementation of the Agreement. If DCPS fails to fully implement the Agreement, we may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give DCPS written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

We have reminded DCPS that it may not harass, coerce, intimidate, or discriminate against an individual because he or she filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. Also, under

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions regarding this letter or the complaint, please contact me at 202-453-5924 or [Dale.Rhines@ed.gov](mailto:Dale.Rhines@ed.gov).

Sincerely,

A handwritten signature in blue ink that reads "Howard Kallen for". The signature is written in a cursive style.

Dale Rhines  
Program Manager  
Office for Civil Rights  
District of Columbia Office

Enclosure

**AGREEMENT**  
**Complaint No. 11-12-1457**  
**District of Columbia Public Schools**

The District of Columbia Public Schools District (the DCPS) agrees to fully implement this resolution agreement (Agreement) to resolve U.S. Department of Education, Office for Civil Rights (OCR), Complaint No. 11-12-1457 and to ensure its compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulation at 34 C.F.R. Part 106, with respect to the issue of whether the selection of interscholastic sports at the DCPS's high schools effectively accommodates the interests and abilities of male and female students to the extent necessary to provide equal athletics opportunities. The DCPS has voluntarily agreed to adhere to the terms of this Agreement.

**I. DEFINITIONS**

**Participant:** An athlete on the team for the first competitive event of the season and who attends a practice after the first competitive event.

**Competitive:** A competition against another team from a different school.

**Supported Sport:** A sport, typically a team, which competes against different schools, in which students participate free of charge and are provided coaching, transportation uniforms and equipment to participate. These sports include, but are not limited to, football, baseball, and track. At the present time these include those sports directly supported by the DCPS and the club sports supported by individual schools.

**Unsupported Sport:** A sport that may or may not be free for a student to participate in and which does not compete against other schools. An example would be a recreational volleyball league at a school in which students compete only against students of the same school.

**II. TRACKING AND COUNTING OF ATHLETES**

The DCPS agrees to implement a method or system, preferably electronic, for tracking athletes for each supported sport. This tracking will include the students who: (1) try out for the team; (2) are cut (including the date they are cut and why, such as lack of skill or squad size management); (3) compete in the first competitive event of the season; (4) are participants; and (5) the athletes' gender. This information will be used to determine who is participating in sports.

**REPORTING REQUIREMENTS – SECTION II:**

To demonstrate its compliance with the terms of Section II of this Agreement, the DPCS will submit the following information to OCR:

1. By November 1, 2013, documentation confirming the development and implementation of a tracking method or system.



2. By February 1, 2014, the number of participants on each interscholastic athletic team at each school by gender for the first semester of the 2013-2014 school year.
3. By July 1, 2014, and every July 1, until OCR closes the monitoring of this case, provide the number of participants on each interscholastic athletic team at each school by gender.

### **III. EFFECTIVE ACCOMMODATION OF INTERESTS AND ABILITIES**

The DCPS agrees to provide participation opportunities for female and male students at each of the DCPS's high schools that effectively accommodate the athletics interests and abilities of members of both sexes, consistent with the requirements of Title IX, the regulation at 34 C.F.R. § 106.41(c)(1), and applicable OCR policies. The DCPS will provide athletic participation opportunities that are either substantially proportionate to each sex's enrollment in its high schools, or demonstrate that the interests and abilities of female students are fully and effectively accommodated by the DCPS's current athletics program. If the DCPS can show providing athletic participation opportunities that are either substantially proportionate to each sex's enrollment in its high schools OCR's concerns will be resolved and compliance with the agreement, beyond the tracking of athletes will no longer be required.

### **IV. DETERMINATION OF UNMET INTEREST AND ABILITY**

In order to determine whether there is unmet interest and ability among female students in the DCPS's high schools who are underrepresented in the DCPS interscholastic athletics programs, the District will take the following actions:

By March 01, 2014, the DCPS will conduct an objective assessment of its student body at each of its high schools and the eighth grade level of its middle schools to determine the existence and/or scope of any unmet athletic interests of female students, the underrepresented sex in the DCPS's athletics programs. The assessment will also consider whether the interested students have the ability to sustain an interscholastic team, noting that they do not need the ability to sustain a successful or elite team, but only need to show that they have the potential to participate in team try-outs, practices and competitions and, with coaching, the potential to attain sufficient ability to participate at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest. The assessment will be based on multiple indicators of interests and, if applicable, multiple indicators of abilities, and shall include the following:

1. A survey of female students at each DCPS high school, and the eighth grade level at each middle school. The survey shall seek information on female students' interest and, if applicable, ability to participate in sports currently offered and in sports not currently offered by the DCPS. OCR will provide a copy of a survey used in another district. The DCPS may modify this survey or create their own. A copy of the draft survey will be submitted to OCR for its review and approval before it is distributed to students.
2. A review of the results of recent surveys of students, if any, or other information collected from students using a method that is designed to fully and accurately assess

unmet athletic interests and, if applicable, abilities in interscholastic sports among female students.

3. Identification of sports, squads, and levels of sports for female students that are not currently offered by each DCPS high school but are offered either by schools that compete within the the District of Columbia Interscholastic Athletic Association (DCIAA) (the league in which the DCPS competes) or by schools that are within the DCPS's normal competitive region and geographic area.
4. For the 2013-2014 school year, female students' rates of participation in sports, and physical education courses that are offered in the DCPS's schools, and if applicable, in community sports leagues, clubs or other youth programs offered in the DCPS's normal competitive region and geographic area.
5. A review of any requests from the 2011-2012 and 2012-2013 school years (whether oral, written, formal or informal) made to School Board Members, DCPS administrators, coaches, or staff by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing club sport to interscholastic sport status.
6. Identification of all viable girls' teams that have been eliminated in the past ten school years.
7. Any other information that demonstrates the athletic interests and, if applicable, abilities of female students in the DCPS's high schools and middle schools.

#### **REPORTING REQUIREMENTS for SECTION IV:**

To demonstrate its compliance with the terms of Section III of this Agreement, the DCPS will submit the following information to OCR:

1. By October 1, 2013, a copy of the draft survey referenced in Section IV.1., above, for OCR's review and approval.
2. By November 1, 2013, a complete description of the planned methodology to conduct the survey, including how the survey will be distributed, the number of surveys to be distributed, the grade levels of students who will receive the surveys, any planned follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who will evaluate the responses to the surveys, and the protocol for retaining a copy of any notes or other documents compiled during the review of the surveys.
3. By February 1, 2014, a detailed report about the assessment conducted pursuant to Section III of this Agreement for each identified high school and middle school. The report will include, at a minimum, the following information:



- a. A copy of the results of the survey referenced in Section III.1, above, including but not limited to the number of students, by sport, who indicated an interest in each sport, a complete description of the methodology used to conduct the survey, including how the survey was distributed, the number of surveys distributed and the number of responses, the grade levels of students who received the surveys, any follow-up to the initial distribution of the survey, the names and contact information for the individual(s) who evaluated the responses to the surveys, and a copy of any notes or other documents compiled during the review of the surveys.
- b. A summary of sports, squads, and levels of sports for female students that are not currently offered by each DCPS high school but are offered either by schools that compete within the region in which the DCPS competes or by schools that are within the DCPS's normal competitive region and geographic area.
- c. A copy of any written requests and a summary of any non-written requests made by or on behalf of female students to add a particular sport, squad, or level of sport, or to elevate an existing club sport to interscholastic sport status.
- d. For the last two academic years, a summary of any assessments made during tryouts, or other information reflecting the ability of female students to compete in a particular sport, prior participation in that sport or a similar sport at the middle or high school level or club or community level, general athletic ability, participation in other high school interscholastic sports, the nature of the particular sport, and other relevant factors.
- e. A description of any team(s) that was eliminated by the District at any high school during the past ten school years, including the number of participants who were on the team in the year it was eliminated and the reason for the team's elimination.
- f. Any other information that was considered by the DCPS as part of its assessment in determining whether it is fully and effectively accommodating the athletic interests and abilities of female students in its high schools.

## **V. ACTIONS TO INCREASE ATHLETIC OPPORTUNITIES**

If, through the above-described assessment, the DCPS identifies a sport or sports in which there is sufficient but unmet interest and, if applicable, ability of female students to participate at the interscholastic level at a particular high school, the DCPS will add athletics opportunities as described below at the high school(s) until such time as either (1) the high school is fully and effectively accommodating the expressed interests and abilities of female students (i.e., there remains no unmet interest and ability); or (2) the participation rate for female students in the high school's interscholastic athletics program is substantially proportionate to their rate of enrollment at the high school.

For purposes of this provision, "sufficient interest" is defined as the minimum number of athletes needed to support a team. For "sufficient ability," it is sufficient that interested students and future students have the potential to sustain an interscholastic team and students will not be required to demonstrate they have sufficient ability in a new sport or team if students participating in existing sports or teams are not required to demonstrate through try-outs or some other process that they possess sufficient ability to participate in the specific sport or at the particular level of competition (varsity, junior varsity, etc.) in which they have expressed interest.

In providing additional athletic opportunities for female students to either accommodate their expressed interests and abilities or until their rate of participation is substantially proportionate to their rate of enrollment at each DCPS high school, the DCPS shall do the following:

1. Sports Currently Offered:

a. For sports at each high school that are currently offered as interscholastic sports, DCPS will determine whether there is a sufficient number of female students with the interest and, if applicable, ability to support the creation of additional levels of competition (junior varsity, sophomore, etc.) or sufficient competition within the high school's normal competitive region to support additional levels of competition or multiple squads at the same level of competition in those sports but does not require the creation of a second varsity team (for example, the addition of a second junior varsity team). If so, the DCPS will add additional levels of competition or squads at the same or a lower level of competition at the high school in those sports by the next competitive season consistent with the above determination.

b. In order to increase the competitive participation opportunities for female students, the DCPS will consider expanding the squad/team sizes for interscholastic sports currently offered at each high school, consistent with the nature of each sport and the level of interest in each sport. The DCPS will increase the size of each squad/team where determined to be appropriate. If necessary, the DCPS will provide sufficient coaching staff to support the addition of new athletes to any given squad/team and take any other steps necessary to ensure that the new athletes on each expanded squad/team are provided meaningful opportunities to participate in interscholastic athletics.

2. Sports Not Currently Offered:

The DCPS will determine whether there is a sufficient number of high school female students with sufficient interest and, if applicable, ability to support the addition of a team or multiple teams (varsity, junior varsity, sophomore, etc.), in sports not currently offered by the high school as interscholastic sports, and whether there is sufficient competition within that high school's normal competitive region and geographic area for those teams/sports. If so, the DCPS will add a team or multiple teams in those sports at the relevant high school(s) by the next competitive season.



3. Response to Developing Interests and Abilities:

For any sport that is not currently offered by a DCPS high school where there is a sufficient number of female students who have sufficient interest and, if applicable, ability in that sport, but where the DCPS determines that there is not sufficient competition within that high school's normal competitive region, the DCPS will take ongoing steps to develop students' interest and ability. These steps may include establishing club sports, exploring the feasibility of establishing competition in the DCPS's normal competitive region and geographic area, and elevating such sports to interscholastic status when competition becomes available.

OCR has made clear to the DCPS and the DCPS understands that OCR does not require or encourage the elimination of any DCPS athletic teams and that it seeks action from the DCPS that does not involve the elimination of athletic opportunities, because nothing in Title IX or the three-part test requires an institution to cut teams or reduce opportunities for students who are participating in interscholastic athletics in order to comply with the provisions of Title IX relating to the effective accommodation of the interests and abilities of male and female students. Additionally, OCR is aware there are times the DCPS attempts to field a team and does not have the requisite student participation to field a team at a given school, but these athletes must be given the opportunity to compete at another DCPS high school.

4. Additional Interscholastic Opportunities:

To the extent that the DCPS adds any sports or additional levels of teams at any of its high schools, the DCPS will provide those team(s) in a manner comparable to other interscholastic teams, with sufficient funds in their budgets to cover expenses that include, but are not limited to: coaches, equipment and supplies, travel funds, and publicity and support services. The DCPS will also publicize any new sports or additional levels of teams through postings on the DCPS website and posting in common areas of schools, and will provide notice to all students about athletic opportunities not provided at their DCPS school of attendance but provided at another DCPS school(s) (including that they will be able to participate at those schools).

5. Addressing Transportation as a Barrier to Athletics Opportunities:

- a. The DCPS will assess the extent to which transportation to and from any DCPS high school with a unique athletic program affects students' participation in athletics;
- b. To the extent transportation negatively impacts the participation of students in athletics when they are required to participate in a sport at a school which they do not attend, the DCPS will develop plan to address the problem by modifying schedules, providing buses and/or public transit vouchers to transport athletes to and from practice and competitive events.



## **REPORTING REQUIREMENTS for SECTION V**

By October 15, 2014, if the DCPS was obligated to offer additional athletic opportunities pursuant to Section V of this Agreement, the DCPS will provide OCR with a detailed report that reflects the steps taken by the DCPS pursuant to Sections V(1)-(5) of this Agreement, to create new opportunities for female students as the underrepresented sex. This report will detail the timetable for the addition of new sports, levels of sports or newly-created club and/or other opportunities added pursuant to this Agreement. It will also describe how the creation of additional athletics opportunities taken pursuant to this Agreement will either (1) effectively accommodate the expressed interests and abilities of female students (*i.e.*, there remains no unmet interest and ability); or (2) elevate female students' participation rate in DCPS interscholastic athletics programs to be substantially proportionate to their rate of enrollment at each DCPS high school.

1. By July 2, 2014, if the DCPS's assessment demonstrates that it is fully and effectively accommodating the athletic interests and abilities of its female high school students at each high school, the DCPS will submit information detailing its determination of the same.
2. By August 1 following each academic year covered by this Agreement, the DCPS will provide OCR with a copy of the squad list for each team at each DCPS high school.
3. By August 1 of each academic year covered by this Agreement, the DCPS will provide information demonstrating the breakdown/enrollment by sex at each DCPS high school.
4. By August 1 of each academic year covered by this Agreement, the DCPS will provide information regarding any increases to the size of its teams, as described by Section V.1.b. above.
5. By December 01, 2013, the District will provide OCR with information demonstrating its determination with respect to the impact the lack of transportation has on student-athletes' participation in other high school programs and showing how the District remedied any problems.

## **VI. ADDITIONAL COMMITMENTS TO IMPROVE THE ATHLETIC OPPORTUNITIES FOR THE UNDERREPRESENTED SEX**

1. The DCPS will develop a process or procedure for students or other interested parties, such as coaches or parents, to use in requesting the addition of new sports or levels of sports at DCPS high schools. The procedure will be written and notice of it will be published in the Athletic Handbook and posted in common areas of each high school and the individual responsible for responding to any requests will be identified by position and contact information. A Female Sports Liaison will also be represented at

each DCPS high school. This information will also be displayed on the DCPS's website (athletics page).

2. At the beginning of each school year, the DCPS will post notice on the DCPS website and on a public wall in each high school to coaches, physical education teachers, guidance counselors and principals, of all sports offered at each DCPS high school, including information on any team not at every DCPS high school that is open to students from other DCPS high schools. The information will include contact information for the coaches of the cooperative and city-wide teams and the location of those sports, so that this information can be shared with interested students.
3. At the beginning of each school year, the DCPS will provide a written description of all of its sports offerings at each high school to all students in their physical education classes, on the DCPS website, and posted in common areas of each high school. This information will provide details about teams at other high schools not offered at the specific school. DCPS will provide for access to these teams even if not at the students' enrolled high school. This is only for students enrolled in the DCPS.
4. The DCPS will maintain the interscholastic athletic Certificate of Eligibility (COE) lists, which shall reflect the participation numbers for each sport, by sex, as of each team's first competitive event. These records will not be destroyed or otherwise altered so that they can be submitted to OCR consistent with the terms of this Agreement.

#### **REPORTING REQUIREMENTS for SECTION VI**

1. By October 1, 2013, the DCPS will submit a copy of its procedure for requesting new sports, as required by Section VI.1, above, and a link to the location on its webpage where the revised procedure is located.
2. By October 1, 2013, the DCPS will provide OCR with a copy of the notices provided to coaches and students, as required by Section VI.2 and 3, above, and a link to the location on its webpage where the notices are located.

The DCPS understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the DCPS understands that, during the monitoring of this Agreement, OCR may visit DCPS schools, interview DCPS staff, and request such additional reports or data as are necessary for OCR to determine whether the DCPS has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.41(c)(1), which was at issue in this case.

The DCPS understands that OCR will not close the monitoring of this Agreement until OCR determines that the DCPS has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Title IX at 34 C.F.R. § 106.41(c)(1), which was at issue in this case.



Signed:

MR for Kaya Henderson  
Kaya Henderson  
Chancellor  
District of Columbia Public Schools

9/26/13  
Date